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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

287

No. 287

INTERSTATE OIL PIPE LINE COMPANY,
Appellant,

vs.

A. H. STONE, CHAIRMAN STATE TAX COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

J. H. SUMRALL,
Counsel for Appellee.

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A. H. STONE, CHAIRMAN STATE TAX COMMISSION,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

STATEMENT OF APPELLEE AGAINST JURISDICTION AND MOTION TO DISMISS OR AFFIRM

This is an appeal from the decision rendered by the Supreme Court of Mississippi on April 26, 1948, reported in 35 So. 2d at page 73.

The case involves the liability of a foreign corporation for the tax imposed upon the exercise of the privilege taxed by Section 2-d of Chapter 119 of the Laws of 1934, being Section 10109 of the Mississippi Code of 1942. The particular part of said section involved in this controversy being the provision for the imposition of the tax on every person engaging or continuing in this state in the business of operating a pipe line for transporting from one point to

another in this state of oil or natural gas, or artificial gas, through pipes or conduits in this state.

The tax demanded and collected by the appellee, as Commissioner, clothed with the authority and charged with the duty of administering the law in question, was on the basis of two per cent of the gross income of the business, the compensation being received only on the basis of the number of miles within the state that the oil was transported, the charge for such services being definitely fixed at so much per barrel of oil transported, according to the number of miles within the state that the oil was transported. The sole contention of the appellant in the original objection to the demand for said tax, first before the Tax Commission on the hearing granted, in the Circuit Court of Hinds County, in which the case was tried under the proceeding provided by statute, in the nature of a suit against the Commissioner for the recovery of the tax paid, and in the Supreme Court of Mississippi, was based on the provision in said section of the law:

> There shall be excepted from the gross income used in determining the measure of the tax imposed in this section so much thereof as is derived from business conducted in commerce between this State and other States of the United States, or between this State and foreign countries which the State of Mississippi is prohibited from taxing under the Constitution of the United States of America."

In the Agreed Statement of Facts upon which this case was tried in the Circuit Court of Hinds County, Mississippi, the following language appears:

> "The amount of sales tax demanded by the Commissioner and paid by the Company, and which it is sought to recover by this suit, was computed only upon the amount of compensation received by the Company for transporting oil or petroleum products from the places

of production in the State to the places in the State where deliveries were made to a railroad or other common carrier for transportation out of the State. And did not include any compensation received by the Company for transportation beyond the boundaries of the State."

It was on the basis of this Agreed Statement of Facts that the Court concluded that the activity of the appellant for which the compensation was received, being wholly within the State of Mississippi, and the further fact that the appellant had no contractual relation with any other transportation company for a continuous movement of the commodity when first accepted by the appellant, does not constitute such a part of the interstate movement, as to permit the exemption contained in the statute to apply to this activity. The sole contact of the appellant with the interstate carrier which ultimately moved the commodity out of the state being as agent for the shipper. The Bill of Lading obtained being in the name of the shipper and the owner of the oil, as consignor, and naming the consignee outside of the state to whom the owner consigned the oil. The delivery to an interstate carrier being made through the agency of the appellant, who performed said service wholly through local activity. The Supreme Court of Mississippi held that the appellant was not engaged in interstate commerce. And it also held that for that reason the language of the statute by which an exemption was granted from the tax did not apply.

The Questions Involved Are Not Substantial

The facts in the case are so clear, and the meaning of the language of the statute involved is too plain to give rise to any question to be decided by this Court, since the tax involved is an Excise tax and does not partake of the nature of a property or ad valorem tax, the imposition of which is

dealt with in most of the cases relied upon by the appellant in support of its contention.

The Supreme Court of Mississippi held that under the admitted facts that the movement of the oil transported by the appellant was clearly in preparation for its interstate transportation, and that the mere transfer of the property to the loading ramp or depot within the state from which the transportation or journey to interstate was to begin, was not a part of that transportation so as to exempt the appellant from State taxation on the ground that it would be an interference with, or burden upon interstate commerce.

In support of the holding of the Mississippi Court, it cited cases establishing the modern trend of the decisions of this Court in holding that even taxation of interstate commerce is not prohibited where it is shown that the result of the tax is not burdensome and does not attempt to regulate or control interstate commerce. The cases cited by the Supreme Court of Mississippi being *McGoldrick* v. *Berwind-White Coal Mining Company*, 309 U. S., 33, 60 S. Ct. 388, 84 L. Ed. 565; *Interstate Natural Gas Company* v. *Stone*, 308 U. S. 522, 60 S. Ct., 292, 84 L. Ed., 442, and other cases.

There are many other cases cited by the Mississippi Court which bear on the opinion, which is part of the record in this case, and I shall not therefore burden the Court by enumerating said cases. But I respectfully call this Court's attention to the language used by this Court in the case of *Memphis Natural Gas Company* v. *Stone*, decided by this Court on June 21, 1948, reported in Advance Sheet Number 16, Volume 68 of the Supreme Court Reporter, at page 1475, the specific language referred to being:

> "As we are bound by the construction of the State statute by the State Court it is idle to suggest that the

tax is on 'the privilege of engaging in interstate business'."

And further:

"This tax is not an unapportioned tax on gross receipts from the commerce itself . . . It cannot be duplicated in other states . . . If it was intended to say that such in-the-state activities as there described could not be taxed, we disagree with that conclusion."

And further:

"This is a tax on activities for which the State, not the United States, gives protection and the State is entitled to compensation when its tax cannot be said to be an unreasonable burden or a toll on the interstate business."

Other authorities relied upon by the appellee in support of its contention that the appellant was not engaged in Interstate Commerce, are the Mississippi case of *Chassaniol* v. *City of Greenwood*, 166 Miss. 848, which was affirmed by the Supreme Court of the United States in 280 U. S., page 390; *Jersey Central Power & Light Company* v. *Federal Power Commission*, 319 U. S. 61; *New York Ex Rel Pennsylvania Railroad Company* v. *Knight*, 192 U. S., 21, 48 L. Ed. 325, 24 S. Ct. Reporter 202; and *United States of America* v. *Yellow Cab Company, Et al*, 332 U. S. 218-234; 91 L. Ed. 2010.

The Construction of a State Statute by the Highest Court of the State Is Binding on the Supreme Court of the United States.

It is a well settled principle of law, that has not only been adhered to by this Court for a long period of time, but which is still adhered to by this Court, that the construction of a State statute by the highest court of the State is binding on this Court.

Among the many cases in which this rule has been announced are *Supreme Lodge Knights of Pythias* v. *Myer*, 265 U. S., 30-32-33; *Hicklin* v. *Coney*, 290 U. S. 169-172; *Hartford Accident and Investment Company* v. *Nelson Manufacturing Company*, 291 U. S., 352-358; *Moorhead* v. *New York Ex Rel Tipaldo*, 298 U. S., 587, 80 L. Ed., 1347; *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 81 L. Ed, 1229; *Allen Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740-751, 86 L. Ed. 802; *General Trading Company* v. *State Tax Commission*, 332 U. S., 355, 88 L. Ed. 1309; and *Independent Warehouse* v. *Scheele*, 331 U. S., page 70.

The Supreme Court of Mississippi having definitely construed the statute involved under the facts admitted, to not only deny the contention of the appellant that it was engaged in interstate commerce, and as a consequence, the exemption provision relied upon by the appellant could not apply, then the questions presented to this Court are so unsubstantial as not to need further argument or comment.

Therefore, the appellee moves this Court to dismiss the appeal, or affirm the judgment herein appealed from.

Respectfully submitted,

ALF H. STONE, CHAIRMAN,
State Tax Commission of Mississippi,
Appellee;

J. H. SUMRALL,
Attorney for the Appellee.